

ARMENIA

A. SUBSTANTIVE ASPECTS
I. Definitions
<p>1. In your practice, do you use the term “non-legally binding agreement”? If so, how do you define it?</p> <p><i>Yes. Non-binding international legal instrument is a written agreement concluded between the subjects of international law or a formation (several formations) not considered subject of international law or not recognised as such, which does not entail rights and obligations for the Republic of Armenia prescribed by international public law, as well as property liabilities, does not contradict the legislation of the Republic of Armenia, does not entail financial obligations for the State Budget of the Republic of Armenia and is not considered an international agreement within the meaning of the Law of the Republic of Armenia “On international agreements”.</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p>
<p>3. Do you consider "Memoranda of Understanding" to be legally binding or non-legally binding instruments? Or can they be both?</p> <p><i>As a general approach "Memoranda of Understanding" is considered to be a non-legally binding instrument.</i></p>
II. Distinction
<p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><i>International agreement is an agreement concluded between the Republic of Armenia and one or more other contracting parties in written form and regulated by public international law, whether embodied in a single instrument or in several interrelated and inseparable instruments and regardless of how it is termed.</i></p> <p><i>Non-binding international legal instrument is a written agreement concluded between the subjects of international law or a formation (several formations) not considered subject of international law or not recognised as such, which does not entail rights and obligations for the Republic of Armenia prescribed by international public law, as well as property liabilities, does not contradict the legislation of the Republic of Armenia, does not entail financial obligations for the State Budget of the Republic of Armenia and is not considered an international agreement within the meaning of the Law.</i></p> <p><i>The national legislation of RA does not use the term international civil law contracts as such.</i></p>
<p>5. In your view, is there one (or multiple) essential element(s) typically qualifying an agreement as non-legally binding? If so, which one(s)?</p> <p><i>The essential elements qualifying an agreement as non-legally binding are the following:</i></p> <ul style="list-style-type: none"><i>• does not entail rights and obligations for the Republic of Armenia prescribed by international public law;</i><i>• does not entail property liabilities;</i><i>• does not contradict the legislation of the Republic of Armenia;</i><i>• does not entail financial obligations for the State Budget of the Republic of Armenia;</i><i>• is not considered an international agreement within the meaning of the Law of the Republic of Armenia “On international agreements”.</i>

6. Do you distinguish between “MoUs” and other types of non-legally binding agreements, such as “joint declarations of intent” or “arrangements”? If so, how?

The non-binding international legal instrument may be in the form of declaration, memorandum, memorandum of understanding, memorandum of intent, statement, programme, protocol, agreement, exchange of letters or notes, as well as, upon mutual consent, document named otherwise.

7. If you distinguish between different types of non-legally binding agreements, do you have different internal rules applying to them?

No.

8. Do you distinguish between the type of non-legally binding agreement concluded with international organisations or States? Do you have different rules applying to non-legally binding agreements depending on whether the other side is a State or an international organisation?

No.

III. Competence

9. Who, within your State/International Organisation, has the competence to sign a non-legally binding agreement?

The procedures for conclusion of non-binding international legal instruments apply to the international instruments being signed by state and local self-government bodies vested with powers established by the laws and other legal acts of the Republic of Armenia, for carrying out international relations and co-operation, except for the cases of conclusion of international instruments between the competent body and the special services of foreign countries and law-enforcement authorities with regard to intelligence, including foreign intelligence and counter-intelligence activities.

10. For States: Are sub-national territorial units like single federal states, provinces, municipalities or public agencies competent to conclude their own non-legally binding agreements?

Municipalities may conclude non-legally binding agreements if so prescribed by their statute and in coordination with the Ministry of Territorial Administration and Infrastructure.

For International Organisations: Are bodies/specialized agencies competent to conclude their own non-legally binding agreements (or can they sign non-legally binding agreements on behalf of the entire organisation)?

IV. (Indirect) Legal Effects

11. Do you consider non-legally binding agreements capable of producing (indirect) legal effects, for example as preparatory acts for/in connection with a legally binding instrument or as interpretative guidance for such binding instruments? Would you consider non-legally binding agreements under certain circumstances as a prerequisite of a binding instrument of international law?

Yes. In numerous cases non-legally binding agreements may produce (directly/indirectly) legal effects, serving as preparatory acts for signing a legally binding instrument, as well as serving as a tool for the implementation of the binding instruments (i.e. in a form of action plans, memorandums of understanding).

B. PROCEDURAL ASPECTS

V. Choice of Instrument

12. What factors influence or determine your decision whether to opt for a legally binding or non-binding agreement? For instance, do you sign non-legally binding agreements to facilitate the conclusion of a legally binding agreement in the future or do you conclude non-legally binding agreements in situations in which a legally binding agreement cannot be reached with the involved sides?

Non-legally binding agreements mainly serve as a tool for the implementation of the already signed binding instruments (i.e. in a form of action plans, memorandums of understanding), as well as such non-legally binding instruments may be as a preparatory act for signing a legally binding instrument at a later stage. As a general approach, mainly that scope of cooperation within a certain document defines whether it will be signed in a form of non-binding international legal instrument or international agreement.

13. Who, within your State/international organisation, ultimately decides whether to conclude a treaty or a non-legally binding agreement?

The competent body, upon receiving the opinions of the interested state bodies, applies to the Ministry of Foreign Affairs of the Republic of Armenia to receive an opinion on whether the instrument is an international agreement or on concluding the relations subject to regulation in the form of an international instrument.

14. What are the main differences in your internal procedure when concluding a non-legally binding agreement or a binding treaty?

In case of international treaties a recommendation to conclude (accede to) an international agreement is being submitted to the Prime Minister by the competent body which shall also provide the rationale for concluding (acceding to) that international agreement and attach to it the opinion of the Ministry of Foreign Affairs of the Republic of Armenia on advisability of concluding (acceding to) the international agreement or advisability of entering into the same relations via other non-binding legal instruments.

Another main difference is that an international agreement signed or subject to accession by the Republic of Armenia shall become binding on the Republic of Armenia through ratification by the National Assembly of the Republic of Armenia or approval of the President of the Republic following the completion of the necessary domestic procedures. Meanwhile non-binding international legal instrument come into effect upon signature.

VI. Formal Assessment¹ of Non-legally Binding Agreements

For States:

15. In your State, is there a mandatory centralised formal assessment of non-legally binding agreements concluded by any government ministry?

Yes.

16. If so, what Ministry/body performs this formal assessment?

The competent body submits the draft non-binding international legal instrument and rationale for the signing thereof, to the Ministry of Foreign Affairs of the Republic of Armenia, for the purpose of receiving an opinion on the advisability of signing thereof from the perspective of foreign policy.

Upon receipt of the positive opinion of the Ministry of Foreign Affairs of RA, the competent body submits the draft to the Ministry of Justice of RA, to the Ministry of Finance of RA, to the authorised

¹ In this section, “formal assessment“ refers to the internal procedure for checking the formal criteria of a draft agreement to ensure it is clearly identifiable as non-legally binding.

<p><i>body in the state property management sector, as well as, upon necessity, to other interested state bodies.</i></p> <p><i>Thereafter, upon receiving the abovementioned opinions, the competent body shall apply to the Ministry of Foreign Affairs of RA to receive an opinion on whether the instrument is an international agreement or on concluding the relations subject to regulation in the form of an international instrument.</i></p>
<p>17. At what time in the process of concluding a non-legally binding agreement is the formal assessment carried out?</p> <p><i>See point 16.</i></p>
<p>18. If sub-national territorial units/bodies or specialized agencies are competent to conclude non-legally binding agreements (cf. question 9), are such agreements subject to the same formal assessment applicable for agreements of the (federal) government/international organisation?</p> <p><i>Yes (in case of municipalities).</i></p>
<p>19. Do you have an internal standard/written guidance for formally assessing non-legally binding agreements, i.e. a law, a directive or internal guidelines?</p> <p><i>Yes.</i></p>
<p>20. How do you ensure all relevant actors are aware of the requirement of a centralised formal assessment of a non-legally binding agreement?</p> <p><i>The procedure is prescribed by the decision N 110-N of the Government of RA from 26th of January, 2023.</i></p>
<p>21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?</p> <p><i>See point 20.</i></p>
<p>22. Does the responsible ministry/body provide guidance to other (government) departments and agencies on best practices with respect to non-legally binding agreements (e.g. workshops, information materials on how to properly draft and conclude non-legally binding agreements)?</p> <p><i>Yes. MFA of Armenia is in contact with the competent bodies, periodically organising workshops, discussions.</i></p>
<p><u>For International Organisations:</u></p>
<p>23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.</p>
<p>VII. Democratic Review/Parliamentary Participation</p>
<p><u>For States:</u></p>
<p>24. Is your legislature notified or consulted about the conclusion of non-legally binding agreements? If so, does parliament need to be involved for any non-legally binding agreement or are there limitations (eg only for politically significant agreements)? Who determines whether such requirements are fulfilled?</p> <p><i>No.</i></p>
<p>25. If so, at what stage of the process is the legislature usually involved?</p>

26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements?
27. If legislative participation is provided for, does the legislature have a (legal) remedy if it perceives a violation of its right to be consulted/to participate?
For <u>International Organisations</u> :
28. In case you have an internal directive/guideline on how to conclude non-legally binding agreements, has this document been approved by the member States/a statutory organ of the organisation?
VIII. Signature and Format
29. Is there a formal procedure to authorise the signature of a non-legally binding agreement? <i>The non-binding international legal instrument is signed by the head of the competent body without specific powers, or under the authority thereof — by another official.</i> <i>Upon the written recommendation of the competent body, an international instrument may be signed by the Minister of Foreign Affairs of the Republic of Armenia, the Deputy Minister, the head of the diplomatic service agency of the Republic of Armenia in a foreign state, without specific powers.</i> <i>No letter of authorisation shall be required for signing an international instrument to be concluded by the Prime Minister of the Republic of Armenia and the Minister of Foreign Affairs of the Republic of Armenia on behalf of the Republic of Armenia or the Government of the Republic of Armenia.</i>
30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document? <i>Yes, the parties to the non-legally binding document have to sign on the same document.</i>
31. Do you allow for electronic signature of your non-legally binding agreements? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of non-binding agreements instead of the exchange of physical copies? <i>No.</i>
32. <u>For States</u> : Do you always require non-legally binding agreements to be set in your own language or do you also accept them exclusively in the partner's language / in English (or any other "neutral" language)? <i>The non-legally binding international instrument shall be signed in Armenian and in foreign languages or only in a foreign language agreed. In case the international instrument is signed only in a foreign language, the competent body shall ensure the Armenian translation of the international instrument.</i> <u>For International Organisations</u> : What language do you usually require for the text of your non-legally binding agreements?
33. Do you have any formal requirements exclusively for concluding non-legally binding agreements? (e.g. using a special kind of paper only for non-legally binding agreements) <i>No. As a general approach non-legally binding international instruments are printed on an ordinary paper, while the international agreements – on a frame paper.</i>
IX. Registration and Publication

<p>34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?</p> <p>Yes.</p>
<p>35. If so, what entity keeps the non-legally binding agreement after signature?</p> <p><i>The Ministry of Foreign Affairs of the Republic of Armenia maintains a register of non-legally binding international instruments.</i></p>
<p>36. Do you publish your non-legally binding agreements and are they openly accessible?</p> <p>The non-legally binding international instrument shall be published on the official website of the competent body as prescribed by the order of the head of the competent body.</p> <p><i>The confidential non-legally binding international instruments shall be co-ordinated, concluded and kept in observance of the procedure for circulation of confidential documents with data containing state and official secret.</i></p>
<p>37. Are there certain reasons (confidentiality, security, etc.) why non-legally binding agreements can be withheld from central registration/storage or (if applicable) publication? If so, which ones?</p> <p>See point 36.</p>
<p>X. Education/Training</p>
<p>38. How do you disseminate information internally regarding the differences between binding and non-legally binding agreements? For example, are there regular workshops or training sessions with the units drafting non-legally binding agreements? Are there certain standard forms ("Model MoU"), which units can use as a drafting aid?</p> <p><i>MFA of Armenia is periodically organising workshops, discussions for the competent bodies.</i></p>
<p>C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)</p>
<p>39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?</p> <p><i>The main benefit of using the practice of non-legally binding agreements is enhancing the process of establishing cooperation in various areas of mutual interest through a much simple and short procedure than the one prescribed for the international agreements. Thus, creating a solid basis for deepening the cooperation or serving as a tool for the implementation of the binding instruments (i.e. in a form of action plans, memorandums of understanding).</i></p>
<p>40. In recent years, have you been concluding an increased number of non-binding international agreements? If so, why do you think this is the case?</p> <p><i>Yes. The increased number of non-legally binding agreements is mainly due to the fact that the procedure for signing those is much simple and short than the one prescribed for the international agreements. Besides that, as we have mentioned above the non-legally binding instruments usually serve as a tool for the implementation of the already signed binding instruments (i.e. in a form of action plans, memorandums of understanding).</i></p>
<p>For International Organisations:</p>
<p>41. How would you describe the main differences between resolutions/declarations adopted by IOs and non-legally binding agreements concluded by IOs from a legal and practical perspective?</p>

42. Do you attribute any law-making effect to non-legally binding agreements? Or do you see them as mere status and administrative arrangements for the purposes of international organisations?